HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.1937 of 1990
Date of decision : 21.02.2007

Bishan Singh **.....Petitioner**

versus

The Gurdwara Mehal Jandiala **.....Respondent**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : None.

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ORDER

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned trial Court dated 18.1.1990, whereby suit for declaration was dismissed as abated after the death of Bishan Singh, plaintiff.

The challenge in the suit is to the Gift deed executed by the plaintiff in favour of the defendant on 1.4.1980. After the death of Bishan Singh, plaintiff, one Sohan Singh and Tej Kaur filed an application on 15.1.1988 for impleading them as legal representatives of the plaintiff being son and wife of the deceased.

The learned trial Court dismissed the application holding that in the previous litigation between Sohan Singh and Bishan Singh, it has been held that Sohan Singh is not the son of Bishan Singh. On the basis of said finding even the stand of Tej Kaur that she is wife of Bishan Singh and mother of Sohan Singh is not proved.

I am of the opinion that the learned trial Court has committed grave illegality and irregularity in deciding the question of impleadment of legal heirs in such manner. As a matter of fact, the question whether Sohan Singh and/or Tej Kaur are the legal heirs of deceased Bishan Singh is not an issue which arises for adjudication of the present suit. The legal heirs are required to be impleaded to continue with the cause of action initiated by the plaintiff. All inter se disputes regarding estate of the plaintiff cannot be made subject matter of the present suit as all such questions are to be decided in separate proceedings as and when such questions arise. The judgment, Exhibit DW1/1, passed by the learned District Judge, Amritsar is binding on Sohan Singh and to what extent, was not required to be gone into by the learned trial Court on an application for impleading the legal heirs of the deceased. The Full Bench of this Court in case ***"Mohinder Kaur and another versus Piara Singh and others, AIR 1981 P&H-130"*** has held to the following effect:-

> "We are, therefore, of the opinion that in essence a decision under Order 22, Rule 5, Civil Procedure Code, is only directed to answers an orderly conduct of the proceedings with a view to avoid the delay in the final decision of the suit till the persons claiming to be the representatives of the deceased party get the question of succession settled through a different suit and such a decision does not put an end to the litigation in that regard. It also does not determine any of the issues in controversy in the suit. Besides this, it is obvious that such a proceeding is of a very summary nature against the result of which no appeal is provided for. The grant of an opportunity to lead some sort of evidence in support of the claim of being a legal representative of the deceased party would not in any manner change the

> nature of the proceedings. In the instant case, the brevity of the order (reproduced above) with which the report submitted by the trial Court after enquiry into the matter was accepted, is a clear pointer to the fact that the proceedings resorted to were treated to be of a very summary nature. It is thus manifest that the Civil Procedure Code proceeds upon the view of not imparting any finality to the determination of the question of succession or heirship of the deceased party."

In view of the above, I am of the opinion that the order passed by the learned trial Court dated 1.4.1980 that the proceeding stands abated is suffering from patent illegality and irregularity. Therefore, the same is set-aside. The trial Court is directed to decide the suit expeditiously, in accordance with law.

The revision petition stands allowed.

(HEMANT GUPTA)
JUDGE

February 21, 2007
**mohinder*